

**MINUTES
OF THE
REGULAR MEETING OF THE
ELECTIONS COMMISSION**

**NOVEMBER 20, 2008
10:00 A.M.
STATE CAPITOL, ROOM 309
415 SOUTH BERETANIA STREET
HONOLULU, HAWAII 96813**

Commissioners in Attendance:

Mr. John Chan
Mr. William Marston, Chair
Mr. Brian Nakashima
Mr. Harold Nelson
Ms. Donna Soares
Mr. Richard Swift
Ms. Yuki Lei Sugimura
Mr. Daniel Young

Technical Support Staff in Attendance:

Ms. Robyn Chun, Department of the Attorney General
Mr. Kevin Cronin, Chief Election Officer
Ms. Ciress Cuevo, Office of Elections
Mr. David Rosenbrock, Office of Elections
Mr. Aaron Schulaner, Office of Elections
Mr. Russell Suzuki, Department of the Attorney General

Guests in Attendance:

Ms. Jean Aoki, League of Women Voters

PROCEEDINGS

I. Call to Order

The meeting was called to order by Chair William Marston at 10:00 a.m. on November 20, 2008 at the State Capitol in room 309.

II. Roll Call and Determination of a Quorum

Ms. Ciress Cuevo, Elections Commission Secretary conducted roll call. Ms. Zale Okazaki was absent.

III. Approval of Minutes of Meeting of October 16, 2008

Ms. Soares requested that her gratitude to the County of Maui elections office expressed at the previous meeting be added under item V.

Ms. Donna Soares moved to approve the minutes of the meeting of October 16, 2008 with amendments. Mr. Richard Swift seconded, and the motion carried unanimously.

IV. Public Testimony – Any interested person may submit data, views or arguments on any agenda item

There was no public testimony.

V. Review of the General Election and Reports from Commissioners

Commissioners shared their experiences and findings from the General Election. The Chief Election Officer (CEO) noted that his project for 2009 includes reviewing and revising all the manuals and will take into consideration the comments shared by the Commission.

VI. Discussion of Haw. Rev. Stat. §11-9(2) re: Commission's authority regarding employment of employees of or under the jurisdiction of the Elections Commission

In response to Mr. Swift's request for clarification on the statute, Ms. Robyn Chun, Deputy Attorney General stated that an executive session is required if a legal opinion is requested and a vote would be needed to amend the agenda. Also, Ms. Chun recommended that specific questions be submitted to legal counsel in writing. Mr. Swift noted that he would submit his question as recommended.

Mr. Swift moved for the Commission to seek a legal opinion on the statute. Mr. Harold Nelson seconded, and the motion carried unanimously.

Addressing Ms. Jean Aoki's inquiry on whether it is necessary for the Commission to discuss the item in executive session, Ms. Chun opined that providing a legal opinion falls under attorney/client communication. However, the result of the executive session may be discussed in an open meeting.

VII. Discussion of Proposed Legislation by the Commission and the Office of Elections

Mr. Nelson asked that the Commission be briefed of any proposed legislation by the Office of Elections prior to submitting to the Legislature.

The CEO noted that he has no problem with informing the Commission of legislative initiatives, but also understands that both the Commission and the CEO have the authority to go to the Legislature directly and independently.

The Commission expressed its need for a budget, which in past was denied when requested by the Office of Elections. As a result, expenses for the Elections Commission have come out of the Office of Elections budget. The Commission would like to request for a budget this legislative year. Chair Marston asked Mr. Nelson to spearhead this effort.

VIII. Preparation of Commission's Report to the Legislature

Mr. Nelson informed the Commission of the statutory requirement to submit a report to the Legislature 20 days before the start of the legislative session.

The CEO suggested that the Commission consider adopting the statistical analysis as the report for the election and include comments from Commissioners.

Ms. Chun opined that the Commission is required to institute the election review program and that this program should reflect the Commission's review of the elections process. Submitting the statistical analysis report from the Office of Elections solely would not constitute as the Commission's review of the elections process. The statistical analysis report may be used in part as a basis for conclusions, observations, and recommendations made by the Commission.

Mr. Russell Suzuki, Deputy Attorney General added that the Commission should inform the Legislature that in order to establish and implement the elections review program, support is needed in the form of an appropriation.

In response to Chair Marston's inquiry on whether there is a procedure that allows Commissioners to communicate their comments regarding the letter of transmittal without having to hold a meeting, Mr. Suzuki opined that Commissioners may communicate comments directly and independently to the Elections Commission Secretary.

Chair Marston moved that the report to the Legislature will include the statistical analysis from the Primary and General Election and be sent via letter of transmittal, which will be a compilation of comments and suggestions from Commission members compiled by Chair Marston and consulted with the CEO. The letter of transmittal will be completed and delivered by no later than January 2, 2009 to the Speaker of the House, Senate President, Majority and Minority

Leaders of the House and Senate, and the Governor. Mr. Nelson seconded, and the motion carried unanimously.

IX. Executive Session pursuant to Haw. Rev. Stat. §92-5(4). Consult with counsel re: the following lawsuits:

1. Babson v. Cronin, Civil No. 08-10-378(3)
2. Procurement appeals (ES&S v. Cronin, Civil No. 08-101657-08, Hart InterCivic v. ES&S, Civil No. 08-1-1665-08, Cronin v. ES&S, Civil No. 08-1-1680-08)

[confidential attorney/client communication]

Ms. Soares moved for the Commission to go in to executive session. Mr. Nelson seconded, and the motion carried unanimously.

The Commission resolved to executive session at 11:35 a.m. and reconvened in open meeting at 11:57 a.m.

X. Adjournment

Chair Marston adjourned the meeting at 11:58 a.m.

Respectfully submitted,
Ciress Cuevo
Elections Commission Secretary